

June 21, 2000

The Honorable Raymond W. Kelly
Commissioner
U.S. Customs Service
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229

Dear Commissioner Kelly:

I have been honored to serve as your Independent Advisor to the U.S. Customs Service's Personal Search Review Commission (PSRC). Enclosed are my recommendations and responses based on the PSRC's report. I hope that you will find my comments useful in your continuous efforts to transform Customs to be more inclusive and just.

In conducting my review, your staff was very helpful and professional. I especially would like to recognize the work of Ms. Gila Zawadzki. Her efforts and the rest of your team at headquarters were exceptional in that they provided requested information in a comprehensive and timely manner. In addition, the officers in the field were very cooperative during my site visits.

Your initiatives to date are commendable and I hope that this report is helpful in making the bold changes you have initiated at Customs. I recognize that some of my recommendations may indeed be well underway as you have been very responsive in revising systems within Customs.

Thank you for allowing me this opportunity and please call upon me when I can be of assistance.

Best wishes,

Sanford Cloud, Jr.
President and CEO

INDEPENDENT ADVISOR'S REPORT

TO

COMMISSIONER KELLY

ON THE

U.S. CUSTOMS SERVICE'S PERSONAL SEARCH REVIEW

COMMISSION'S FINDINGS AND RECOMMENDATIONS

BY

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THE NATIONAL CONFERENCE FOR COMMUNITY AND JUSTICE

JUNE 21, 2000

**INDEPENDENT ADVISOR'S REPORT TO COMMISSIONER KELLY
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FINDINGS AND RECOMMENDATIONS**

EXECUTIVE SUMMARY

In response to recent allegations that some U.S. Customs Service officers are using methods that involve bias when selecting passengers for personal searches at airports, U.S. Customs Commissioner Raymond Kelly formed the Personal Search Review Commission (PSRC) to examine Customs policies and procedures regarding international passenger processing. The PSRC is composed of four non-Customs federal government officials, and I was asked to serve as his Independent Advisor in order to assess the findings of the PSRC and make subsequent recommendations.

The PSRC expanded upon their task of identifying findings regarding Customs policies and procedures by also providing recommendations. Therefore, the recommendations of this report are based on the findings and the recommendations of the PSRC.

A separate review of Customs policies and practices was conducted simultaneously by my colleague, Danielle Glosser, and me. Our methodology consisted of five site visits to international airports; meetings and interviews with individuals knowledgeable about Customs policies and practices; and a literature review.

The recommendations of this report address the following issues:

- The effectiveness of the personal search processing policies, procedures, and implementation;
- Issues that address the center of the allegations, specifically, whether racial and ethnic profiling occur as part of Customs passenger processing procedures;
- How Customs handles the alleged misuse of the passenger processing procedures by their officers;
- The effectiveness of recently institutionalized revised policies and procedures;

- Employee morale;
- Training issues: criteria for diversity trainers; training curriculum and evaluation materials; and field issues such as on-the-job training;
- The impact of the increase in air passenger traffic and the importance of seeking additional funding; maintaining a diverse staff; and staff allocation issues;
- Creating a uniform process for those detained at hospitals;
- Collecting and tracking race and gender statistics regarding secondary searches; and
- A future monitoring system.

The PSRC made 20 recommendations. Of these, I support seven unconditionally and have no additional recommendations; I further support 11 of the proposed recommendations and articulate additional recommendations; and I do not support two of the PSRC's recommendations. In addition, there are a host of recommendations that address issues not identified by the PSRC which are outlined in the bullet points above.

The purpose of these recommendations is to assist the U.S. Customs Service in providing significant national and community leadership in designing, modeling and implementing bold initiatives in order to improve human relations within their agency and towards the public. In order to accomplish this goal, Customs must continue to transform their institution.

Commissioner Kelly has dramatically advanced this work and his efforts to provide fuller opportunities that are more inclusive and just for all are commendable. Continuing to implement such policies and procedures remains a challenge, yet one with achievable goals that will ensure equal treatment.

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I. BACKGROUND INFORMATION

A. U.S. Customs Service’s Personal Search Authority, Mission, and Importance

The federal law authorizes Customs to search and detain persons entering the United States who they suspect have any type of merchandise subject to duty or who are in possession of prohibited items. The Fourth Amendment of the Constitution requires officers to have a warrant based on probable cause to conduct searches, however, Congress¹ and several court rulings² have authorized Customs searches as the exception. The reasoning for such broad parameters is due to the tremendous risk posed by individuals attempting to smuggle contraband into the United States.

Customs officers therefore have the authority to stop, interview, and search anyone entering the United States.

This level of authority provides the opportunity for the U.S. Customs Service to accomplish their mission: to ensure that all goods and persons entering and exiting the United States do so in compliance with all of the country’s laws and regulations.³ In order to achieve this mission, Customs has many strategies and processes in place. One such core mechanism addresses passenger processing.⁴ A Customs goal, as noted in the U.S. Customs Strategic Plan, is for

¹ Act of July 31, 1789, ch. 5, Sec. 23, Sec. 24, 1 Stat. 43. See 19 USC Sec. 507, 1581, 1582.

² The U.S. Supreme Court in *United States v. Ramsey*, 431 U.S. 606 (1977).

³ U.S. Customs Service Strategic Plan 1997 - 2002.

⁴ Passenger processing is the means in which passengers are moved through border inspection procedures.

their passenger process to “achieve a 99 percent rate of compliance with Customs laws and regulations for passengers and crew of commercial and non-commercial conveyances entering or leaving the United States.” According to Customs, compliance is ensured by targeting, identifying, and examining high-risk travelers, while expediting low-risk travelers.

In order to achieve this goal, the obstacles are tremendous and the challenges great. Customs officers are responsible for processing all merchandise, passengers and crew arriving and departing on commercial and non-commercial air conveyances, sea conveyances, and at U.S. land borders. Such duties continuously expose Customs officers to very difficult and dangerous situations such as narcotic smugglers, money launderers, and terrorists. In addition, Customs agents are responsible for enforcing more than 600 laws for more than 60 federal agencies.

B. Current Allegations Against the U.S. Customs Service

According to some Customs’ staff, Customs has been challenged about their selection procedures for passenger processing since 1988 when every air passenger was no longer stopped and questioned upon his/her arrival into the United States. One consequence of the revised system has been public scrutiny regarding the processes used to determine which passengers are selected for personal searches at airports (see Appendix A for a summary of the type of searches conducted). Recent allegations suggest that some U.S. Customs officers are using methods that involve bias when selecting passengers for personal searches at airports, particularly African American women and Latinas. Such practices are often referred to as racial profiling.⁵

These allegations are complicated and serious. Some of the allegations reported about Customs through complaints, lawsuits, and to Congress are disturbing, graphic, and inhumane. They range from individuals being held for unreasonable amounts of time without the liberty to contact anyone, to a pregnant woman being forced to ingest laxatives.⁶ Such allegations have raised many questions about the necessity and effectiveness of personal searches.

C. Charge of the Personal Search Review Commission and Commissioner Kelly’s Independent Advisor

One of Commissioner Kelly’s initiatives to investigate and identify solutions regarding such

⁵The term “racial profiling” neglects to include other factors involved, namely, issues regarding religion, gender, class, and ethnicity. Therefore, for the purposes of this report, the term “profiling” is used and defined as identifying individuals based on characteristics that do not individually suggest evidence of criminality (adopted from the American Civil Liberties Union - www.aclu.org).

⁶Testimonies included in the Congressional Record of May 20, 1999.

allegations was to form an independent review commission. On April 8, 1999, the Personal Search Review Commission (PSRC) was announced to examine Customs policies and procedures for international air passenger processing.⁷ Specifically,

- To review procedures for and methods of processing travelers and selecting passengers for further examination at airports;
- To review the adequacy of information made available to the traveling public about U.S. Customs search authorities and procedures;
- To review search procedures, including personal searches; and

⁷ PSRC was charged to review only air passenger processing, not land or sea operations.

- To review the impact of these procedures on the passenger.⁸

Members of the PSRC included four non-Customs federal government officials: Ms. Constance Berry Newman, Under Secretary of the Smithsonian Institution; Ms. Robin Renee Sanders, former Director for Africa at the National Security Council who is currently serving as a State Department official; Ms. Ana Maria Salazar, Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support; and Hubert T. Bell, Inspector General for the United States Nuclear Regulatory Commission (see Appendix B for biographies).

At the conclusion of their review, the PSRC advised Commissioner Kelly on how Customs could effectively perform its informational and search responsibilities when processing passengers.

In addition to appointing the PSRC, Commissioner Kelly asked me as President and CEO of the National Conference for Community and Justice, to serve as his Independent Advisor to the PSRC (see Appendix C for biography). My charge was to review the findings of the PSRC and make subsequent recommendations to the Commissioner. In order to assess the PSRC's findings, my special assistant, Ms. Danielle Glosser, and I conducted a separate review from the PSRC of Customs policies and procedures regarding personal searches.

D. Accepting the Role of Independent Advisor

As the President and CEO of The National Conference for Community and Justice (NCCJ), a human relations organization, I accepted this charge from Commissioner Kelly because it was an opportunity to further the essential work and mission of NCCJ: to fight bias, bigotry, and racism in America and promote understanding and respect among all races, religions, and cultures through advocacy, conflict resolution, and education.

In addition, I accepted this role because of the serious and thoughtful steps that Commissioner Kelly has taken, and continues to enact, in response to the numerous allegations about the ways in which Customs is using procedures that appear to have a level of bias in the selection of passengers for personal searches at airports. His leadership in confronting these issues and the actions that he has taken to date to eliminate bias within Customs has been significant (see Appendix D for a summary). He is changing the culture of the organization and his efforts are transforming the U.S. Customs Service to be more inclusive and just.

⁸U.S. Customs Press Release of April 8, 1999.

II. METHODOLOGY

In addition to reviewing the PSRC's report to Commissioner Kelly, several additional methods were applied in order to independently assess Customs policies and procedures regarding personal searches in international airports.

A. Site Visits

Five site visits occurred: four in the most frequented international airports in the United States -- - New York City (JFK), Miami, Los Angeles (LAX), and Chicago (O'Hare) --- as well as Atlanta. Most of the visits began with a briefing by the port director, chief inspector(s), and a passenger service representative. This was usually followed by a tour of the facilities with time allotted to observe their procedures for passenger arrivals, rover team operations, and secondary examination processes.⁹ The opportunity to learn about the K-9 unit, Passenger Analytical Unit¹⁰, Advance Passenger Information System (APIS)¹¹, and respective technology devices was also provided. Time was also allotted to meet and ask questions of additional Customs staff. Most site visits lasted approximately three to six hours.

The goals of these site visits were to:

- Observe and gain a greater understanding of how Customs policies and procedures are implemented on a daily basis;

⁹ Secondary examinations go beyond routine questioning and may include a baggage examination or personal search.

¹⁰ The Passenger Analytical Unit reviews APIS information (defined below) to identify high risk passengers for inspection.

¹¹ APIS is a computerized system that some airlines use, on a voluntary basis, to send Customs information on passengers in advance of a flight's arrival. The information is checked against databases that contain lookout records and outstanding warrants. The passenger's name, date of birth, passport number (if available), and nationality are available --- gender and race are not included.

- Meet port staff and inquire about their workplace experiences (i.e., training, daily challenges, and feedback);
- View the facilities in which the U.S. Customs Service operates;
- Learn about the relationship between Customs, the U.S. Immigration and Naturalization Service, and the U.S. Department of Agriculture;
- See Customs new technology; and
- View Customs signage.

B. Meetings and Interviews

The people who were approached for information about Customs' personal search policies and practices fell into two categories. One group consisted of current or former government leaders that are knowledgeable about Customs. This included Customs Assistant Commissioners, Directors, Special Assistants, Program Managers, and additional staff; White House staff; employees of the U.S. Department of Justice; staff of the U.S. House of Representatives' Ways and Means Committee; and Training Managers at the Federal Law Enforcement Training Center (FLETC).

In addition, national leaders who have interest in Customs policies and procedures or who represent communities that have alleged they are frequently targeted by Customs were contacted. This included civil and human rights leaders; individuals that testified at the hearings of the U.S. House of Representatives' Ways and Means Committee on May 20, 1999 about Customs passenger inspection operations; members of the National Treasury Employees Union; and members of the Passenger Facilitation Committee.¹²

These meetings and interviews provided valuable information from a broad spectrum of people who represent a large number of constituents and communities about their experiences, ideas, and concerns regarding Customs personal search policies and procedures.

C. Customs Materials Reviewed

An exhaustive amount of materials was reviewed to assess Customs personal search policies and procedures including Customs recruitment information, training manuals and videos, internal committee reports, personal search and other statistics, data management processes, strategic

¹²The Passenger Facilitation Committee is an airline industry group composed of individuals who work for airline companies that belong to the Air Transport Association.

plans, employee demographics, employee disciplinary procedures, employee awards programs, employee tests, complaint letters, port specific materials, and internal and external communications and directives. In addition, Congressional testimony, court cases, news articles, and external committee reports were reviewed.

III. RECOMMENDATIONS BASED ON PSRC'S REPORT

The PSRC expanded upon their task of identifying key findings regarding Customs policies and procedures for international air passenger processing by also providing recommendations. Therefore, below are recommendations based on their findings and responses to their recommendations.

The PSRC divided their findings and recommendations into three categories. This section has therefore been outlined accordingly. **The PSRC's language defining the categories, findings, and recommendations has been replicated for convenience.**

CATEGORY 1

Category one issues address the effectiveness of the personal search processing policies, procedures, and implementation.

Among the sub-issues considered in this category are the following: is there built-in accountability throughout the U.S. Customs Service organization for effectiveness, conformance to the regulations and policies, and treatment of passengers?

Other, more detailed questions that the PSRC considered in drawing conclusions about the effectiveness of the personal search processing policies, procedures, and implementations were as follows:

- Are the passenger processing procedures effective?
- Are the facilities proper and accommodating to the passengers?
- Do the passengers have to leave the port for certain types of searches? Is this necessary? What are the options?
- Do the Customs officers adequately respond to the questions of passengers? Is the amount of

information given by Customs officers limited by a concern that drug smugglers would benefit from the additional information?

- Are the Passenger Service Representatives effective?
- What is the quality of the information provided to passengers?
- What are the rules for allowing passengers who are searched to make phone calls or to contact traveling or waiting companions? Are the rules properly implemented?
- Is the complaint process effective?

These questions were not answered separately in the PSRC's report, but were considered in their inquiry, and interviewees' responses helped to inform the PSRC's recommendations on these issues.

The PSRC noted that there are many extremely dedicated people carrying out Customs policies and enforcement responsibilities, as they understand them, in a professional manner.

They also noted that Commissioner Kelly has already undertaken impressive changes. The PSRC reviewed the major changes in policies to determine the extent to which they addressed their findings. The PSRC commented on the policy changes in their report and noted that it was too early to evaluate the effectiveness of the implementation of the policies. The PSRC stated that such evaluation should be built into the on-going monitoring of the agency under the leadership of the U.S. Customs Service.

A. Background on the PSRC'S Findings about the Effectiveness of the Personal Search Policies and Procedures

In May 1999, a Customs report presented the results of an air passenger customer satisfaction survey that was conducted at eight of the top 23 airports between 1998 and 1999. Most people interviewed were confident that the Customs process prevents illegal activities because the officers are well-trained and the process is thorough. This particular survey did not identify findings of respondents by race or ethnic origin. The basic findings were as follows:

- Ninety-six percent of the 2,340 individuals surveyed indicated that the U.S. Customs Service personnel represented professionalism, defined as doing their jobs and being polite. Eighty-one persons found the Customs personnel somewhat unprofessional, and five found them very unprofessional. The major reasons given for identifying the personnel as unprofessional were negative attitudes, unhelpful, rude comments, not attentive, poor grooming, chewing gum, and unfriendliness.
- Seventy-five percent of the 2,340 agreed that the U.S. Customs Service areas of the airports

were effective, and 20 percent were neutral on this point. The best part of the arrival process, according to those surveyed, was the rapid turnaround and the polite officers. The worst part of the arrival process was nothing in particular (56%) and waiting for their bags (20%).

- The individuals surveyed were generally familiar with the U.S. Customs Service requirements and could distinguish between the U.S. Customs Service and the U.S. Immigration and Naturalization Service. However, fewer than 30 percent could distinguish between the U.S. Customs Service and the U.S. Department of Agriculture.

- The people who were sent to the secondary process section answered the survey question "Why do you think you went through the secondary process?." The answers were as follows: don't know (35%); information on the form (25%); random inspection (16%); other reasons including color of skin, language, travel a lot, prior seizure (11%), or fit a profile (7%). When asked: "What can be done to avoid secondary?" they answered: nothing (70%); and don't know (18%).

- The recommendations for improvement of the Customs processing procedures by those surveyed were: nothing (49%); more enforcement (17%); and use more technology (10%). Other recommendations included: improve immigration, eliminate the declaration form, improve the signage, and improve inspectors' attitudes.

B. Specific Findings and Recommendations

PSRC Finding 1: The Public's Understanding and Acceptance of U.S. Customs Service Responsibilities

Even though the May 1999 survey indicates that the U.S. Customs Service personnel performed in a professional manner, the PSRC asserted that a basic issue has not been adequately addressed: whether there is proper balance between protection of the rights of the individual against intrusive personal searches and effective seizure of drugs.

PSRC Recommendation 1: The U.S. Customs Service should initiate a high-level policy discussion on this issue to include federal counter-narcotics policymakers, enforcement officers, and the public at large. The U.S. Customs Service could understand the public's view of this issue better if the Service conducted surveys or used focus groups organized by the port directors or the Customs Management Centers¹³ and established a central reporting system to inform them of possible policy changes. The

¹³ Customs territory is divided into 20 geographic areas which are each managed by a CMC. Their purpose is to execute the field operations mission by providing administrative support and management oversight for all of the ports within their area.

reports of the surveys and focus groups should identify the race/ethnic origin of the respondents.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC and have no additional recommendations.

PSRC Finding 2: The Accountability Process

In the past, the accountability covering the personal search processes throughout the organization seemed weak. Further, it was not clear how the U.S. Attorneys should be held accountable for their role in the process. Only recently, under Commissioner Kelly, the directors of the Customs Management Centers, the port directors, and Customs supervisors have become more directly involved in supervising and monitoring the personal search actions on the front line.

One way that accountability is often determined is through the performance management system. The present performance agreement for managers and supervisors is general, in that it covers all managers and supervisors (see Appendix E). It is left to the employee and supervisor to outline the specific program/mission objectives. This is as expected. Among the critical areas in the performance review process are competencies in business practices, leadership/management practices, and values. Another critical area is equal employment opportunity, to ensure fairness and equity in the workplace. The PSRC did not review the extent to which the appraisal process is real or pro forma. They noted, however, that the appraisal forms do not include comments on the performance of employees with respect to the new rules on personal searches of passengers.

In March 1999, Commissioner Kelly issued a document implementing a self-inspection program to verify that the Customs mission is being performed in the most effective and efficient way (see Appendix F).

PSRC Recommendation 2: To ensure accountability throughout, the U.S. Customs Service needs to specifically identify in the performance management system a way of evaluating the sensitivity of Customs personnel in dealing with the public, particularly in personal search activities. Therefore, human resources/personnel experts should work with U.S. Customs Service management to ensure that the performance management system effectively monitors the execution and supervision of a proper personal search system.

There should also be a review of the self-inspection program to determine the extent to which the new directions ensure greater accountability for conformance to the new personal search policies.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC and have no additional recommendations.

PSRC Finding 3: The Passenger's Rights and the Role of the U.S. Attorney in Assuring That These Rights Are Protected

There appears to be a weakness in accountability in aspects of the legal system that go beyond the authority of the U.S. Customs Service and reside with the U.S. Attorneys. Granted, border searches are a well-recognized and long-established exception to the probable cause and warrant requirements of the Fourth Amendment. However, there are limits.

The courts have required notification to the U.S. Attorney to seek judicial approval of detention and notification to private counsel or a public defender:

- U.S. v. Esieke 940 F2d 29, 36 (2d Cir) cert. denied, 502 U.S. 992 (1991) had a 24-hour requirement.
- U.S. v. Onumona 967 F2d 782, 790 (2d Cir 1992) had a 24-hour requirement.
- U.S. v. Adekunle, 2 F3d 559, 561 (5th Cir 1993) required a reasonable time, essentially 48 hours. There the Court of Appeals for the Fifth Circuit stated: "We cannot ... countenance the absurdity that one may have his liberty restrained for a longer period based on a mere suspicion than he lawfully could be detained based on probable cause." The court added: "Under basic Fourth Amendment principles, the government, after detaining a suspected alimentary canal smuggler, must seek a judicial determination, within a reasonable period, that reasonable suspicion exists to support the detention."

PSRC Recommendation 3: To ensure that the rights of the passengers are adequately protected with every power within the legal system, the PSRC recommended that Customs officers contact the U.S. Attorney's office to seek judicial approval at the first opportunity after they determine that a passenger should be detained on reasonable suspicion of being an internal carrier.¹⁴ Initially they believed that the notification should occur no later than four hours from the initial detention for a personal search. They recognized that the new agreement between the Department of the Treasury and the Department of Justice provides for an eight-hour time limit, and suggested that this time limit be monitored within the next year to determine if the agreed-upon time adequately addresses the issues raised in their report.

Independent Advisor's Recommendations and Response: The PSRC's recommendation addresses the epicenter of this issue - the civil rights of passengers. However, their solution is too subjective in that it would allow Customs officers to define the "first opportunity" of when to contact the

¹⁴An internal carrier is someone who has contraband, typically illegal drugs, inside of their body. This could be accomplished by swallowing small packets of drugs or by inserting a package inside of a body cavity (vaginal or anal area).

U.S. Attorney's office to seek judicial approval to detain a passenger once it has been determined that there is reasonable suspicion that s/he is an internal carrier.

Another suggestion of the PSRC was to monitor the current eight-hour time limit over the course of the next year which was agreed upon by the Department of Treasury and the Department of Justice. It remains unclear as to why eight hours was deemed a reasonable time limit versus four hours or even two hours. Therefore, instead of imposing a revised time limit, which may present unknown challenges to Customs and the U.S. Attorneys Office, and considering the number of previous debates that have occurred over this issue, it is recommended that the agencies hold a mediated session with an independent panel as soon as possible.

This meeting would allow for officials from Customs and the Department of Justice to determine a mutually agreeable and concrete solution that honors the rights of passengers, which is neither too burdensome to Customs officials nor U.S. Attorneys. This discussion should provide an opportunity for officials from both agencies to present their cases to an independent panel (perhaps composed of the PSRC members) which would determine a fair and humane time limit that a passenger should be detained before a Customs official must contact the U.S. Attorney's office to seek judicial approval if there is reasonable suspicion that s/he is an internal carrier.

PSRC Finding 4: The Staffing Levels in the U.S. Customs Service

The U.S. Customs Service rank and file and supervisors have complained about understaffing and lack of overtime pay. They believe this understaffing leads to frustrations in the workforce, which they say could account for some of the rudeness to passengers.

PSRC Recommendation 4: Even though the staffing levels may explain rude treatment of passengers, it is never acceptable behavior. It should be addressed as an issue in the hiring, training, and performance evaluation of all personnel. However, it will be useful for the Service to analyze the minimum staffing requirements for effective processing of passengers and dealing with passenger complaints as the volume of passengers increases. It will be important to be on record with those requirements with the Office of Management and Budget and the Congressional committees.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC. In addition, to address the concerns regarding understaffing and lack of overtime pay, Customs needs to continue to aggressively pursue funding for additional staff including the extension of the Consolidate Omnibus Budget Reconciliation Act (COBRA).¹⁵

¹⁵ COBRA allows for Customs to collect a fee from a variety of sectors that require U.S. Customs Services.

According to Customs Office of Field Operations, the fees collected as a result of this Act are used to provide expedited processing of the fee payers. The fees currently allow for approximately 1,100 positions at airports and are used to pay officers overtime fees as well as costs associated with Customs information technology infrastructure. They also asserted that since 1996 their operational expenses have been exceeding collections and cannot be sustained at the current rate of spending through the expiration of COBRA on September 30, 2003. Therefore, increasing the air passengers' user fee should be explored immediately. The fee has not increased from the current rate of \$5.00 per passenger since its inception in 1986.

PSRC Finding 5: The Information Provided to Passengers by the U.S. Customs Service

Some of the problems the U.S. Customs Service has had are related to the limited amount of information provided to passengers about the personal search process and the passenger's rights during Customs border searches. The U.S. Customs Service has recognized this as a problem and contracted with a private consulting firm to review the communications strategy as a separate issue, and it is in the process of implementing the recommendations of that firm. It is important to note that some of the inspectors interviewed are concerned about informing passengers of the reasons they were selected for secondary searches for fear that this would reduce the effectiveness of the Service's seizures of narcotics.

The PSRC knows that the intent under the new policies and procedures is to increase the transparency and information provided to the passengers. However, they are concerned that the Service will be reluctant to implement in the field the new guidance to inform the passengers of the reasons and purposes of the searches. Some of the PSRC members, based on their interviews, concluded that there is not a clear understanding in the Service of what rights passengers do have.

PSRC Recommendation 5: The U.S. Customs Service should state in writing its policy on informing passengers of their rights and the personal search process. The Chief Counsel needs to work with the public affairs staff to add more to the informational brochures and to the training on passengers' rights. The new directions on passenger information in the new Personal Search Handbook should be emphasized in the training of all personnel. Further, Customs officers should have access to counsel during the process so that they will have legal guidance on informing passengers of their rights. Commissioner Kelly should ask the Chief Counsel to look into the issue of passenger rights and ensure that all Customs officers are aware of the nature of those rights. The implementation should be monitored.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC. In addition, the following groups should be approached and encouraged to distribute Customs brochures: APIS' partners, when declaration forms are distributed; the U.S. State Department, when individuals apply and renew their passports; travel associations; and travel agents.

In addition, the Passenger Rights policy should be posted on Customs' website.

PSRC Finding 6: Informational Signs

Improvements in informational signs have been made in some of the airports, but more improvement is required. At most of the airports visited by the PSRC, the information and Passenger Service Representative placards were not placed where incoming passengers could readily see and read them or understand that they are connected to the U.S. Customs Service process. In some cases, the signage is behind the secondary area. In other airports, placards were on top of the baggage carousel, but here too passengers were not reading them or realizing that they contained Customs information. The same problem occurs with information about Passenger Service Representatives. That information is not placed where passengers can read it, nor does the information identify the Passenger Service Representatives as a Customs employee and someone who can help passengers.

PSRC Recommendation 6: The U.S. Customs Service needs to work with the airport authorities to improve the location of the signs and review/update current signs to give passengers a better idea of their rights. Furthermore, the signs referring to the Passenger Service Representatives need to be better placed and clearly state their role and responsibilities, specifically their responsibility to assist passengers during Customs processing.

Also, Customs needs to make an effort to include other languages in the signs and other information forms. One option would be for the U.S. Customs Service to work with the airport authorities to identify locations and install automated electronic display devices, with key information rotated through in several languages, in strategic places such as above the baggage carousel or in other spots in the baggage area.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC and have no additional recommendations.

PSRC Finding 7: The Privacy of Passengers

Lack of privacy for the people identified for secondary searches (the area where passengers are further questioned) continues to be a problem in some of the airports, sometimes for lack of space.

PSRC Recommendation 7: The airport authorities should be persuaded to play a greater role in assisting the U.S. Customs Service in developing a proper and private environment for the secondary searches in all airports. The PSRC encourages more conferences with selected authorities to address issues of mutual interest, resulting in greater privacy for the passengers. In the interim, the U.S. Customs Service should review its current space and provide greater privacy there.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC and suggest partitioning off the spaces where secondary searches are held as soon as possible until alternative environments are created.

PSRC Finding 8: The Passenger Service Representative Program

In 1992, the Passenger Service Representative program was informally established to serve as an additional resource in the airports for providing customer service in a professional manner, answering questions, and making passengers aware of entry requirements. In June 1999, the policy governing the Passenger Service Representatives was revised. Still, according to the PSRC, it is not clear whether the traveling public knows about or understands the role of the Passenger Service Representatives.

PSRC Recommendation 8: Customs should take strong steps to explain to passengers the role of the Passenger Service Representatives. Further, the Passenger Service Representatives should make recommendations to Commissioner Kelly on how their roles could be strengthened even beyond the most recent changes. This may mean including the Passenger Service Representatives when and where a passenger has complained about the personal search process. This means that the Passenger Service Representatives may be present when the supervisors are reviewing complaints, even if as observers.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC. In addition, Passenger Service Representatives need to participate in a formal job training program about their roles and responsibilities within the agency and to passengers. This program should be determined by Customs Assistant Commissioner of the Office of Training and Development. Passenger Service Representatives also need to seek additional opportunities, and be provided with the time and resources, to share Customs procedures and policies by going to events sponsored by schools, associations, trade fairs, and the travel industry (especially international travel programs for youth and adult abroad programs). Meetings could also be held at airports in order for these groups to have a better understanding of Customs policies and procedures.

CATEGORY 2

The category two issues go to the heart of some of the allegations and ask: Does racial and ethnic profiling occur in the U.S. Customs Service as a part of passenger processing procedures? How? Where? Based on what authorities?

Even though the observational technique and not racial profiling is one of the articulable factors (see Appendix G), some passengers complain about the passenger processing procedures. The reason for

the complaints is that there are a higher percentage of minorities being subjected to secondary and body searches than is probably their percentage of the traveling public.

PSRC Finding 9: Racial Profiling

The PSRC operated on the assumption that racial profiling is a technique whereby a set of characteristics of a particular class or race or ethnic origin of a person is inferred from past experience or stereotypes, and data holdings are then searched for individuals with a close fit to that set of characteristics. The U.S. Customs Service says it does not use racial and ethnic profiling as part of the passenger processing procedures or any other procedures. Instead, it operates on experience, expertise, intuition, training, information on smuggling trends, and the pattern of past seizures. Its officers observe behavior and physical condition, ask questions, and analyze documents. What is clear, however, is that these articulable factors and observation techniques were developed by Customs and then passed forward in the Customs system. They have never been reviewed by an outside professional expert (e.g., a psychologist or sociologist) to see if they are stereotypical or could contain stereotypes.

Customs officers stated their own concerns as follows:

- They are keenly aware of their responsibility in stopping the flow of drugs into the United States.
- They also are concerned about the Service's reputation and the publicity surrounding the numerous allegations of racial profiling.
- They are concerned about the possible effect the allegations and responsive policy changes could have on the performance of their law enforcement duties.

Some Customs officers interviewed have expressed disapproval of the decisions of their colleagues that led to passenger searches that caused the recent publicity and are now under scrutiny and litigation. Officers have commented that with similar facts they would not have proceeded with cavity searches, X-rays, body searches, or monitoring of bowel movements. Many suggest that the lack of judgment is a result of lack of experience and adequate supervision. Part of the present response to the internal and external concerns is to increase the role of supervisors in decision-making. It is the PSRC's view that any changes in procedures that increase the role of supervisors and possibly the role of Passenger Service Representatives in these decisions are steps in the right direction.

PSRC Recommendation 9: Because some segments of the public will not believe that there is a great difference between racial profiling and using an articulable factor list, the U.S. Customs Service needs to explain clearly that the kinds of indicators it finds through experience support secondary questioning and a body search. It does not seem that sharing general information (not specific details) with the public

would reduce the number of seizures. Furthermore, it seems that general disclosure would improve the public's understanding and respect for the role and responsibilities of the Service. It will also be very important for the articulable factors, including observational techniques, to be reviewed by professionals outside of the U.S. Customs Service to determine whether they are based on stereotypes, and for the findings of that review to be made public.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC. In addition, select information that outlines how personal searches are determined should be posted on Customs website. This information should include Customs definitions of "some or mere suspicion" as well as "reasonable suspicion"; and the factors that may and may not be used in the decision making process of whether to conduct or not conduct a personal search.

PSRC Finding 10: The Use of Observational Techniques as One of the Articulate Factors

The guidance and training for inspectors cover the rationale for secondary searches allowing for the use of articulable factors (observation techniques) as one of the six bases for searches. The observation techniques have been developed over time by inspectors and passed on through in-house training. These factors have been infrequently reviewed within the Service and rarely reviewed by non-Customs Service professionals. Officers in the field recommended that the list be reviewed periodically to revalidate it.

In March 1999, the Assistant Commissioner, Field Operations, established a committee to review the targeting criteria used in air passenger processing. In June 1999, that committee issued a report that proposed significant changes in the methodology of selecting and targeting passengers for personal searches.

Several observations need to be stated about the proposed changes in policy: (1) It is too early to tell the extent to which the recommendations, now policy, will actually be implemented across-the-board and become institutionalized. That is the case even when the policy changes are issued because so much depends on the experience and judgment of the inspectors and their supervisors. (2) The change in the actual behavior in the field will depend on the quality of direction and training.

It is important that the field staff understand and accept these changes. The initial reaction of some of the Customs inspectors is that the changes will have a chilling effect on the seizures of narcotics coming into the United States, hence diminishing their enforcement authority. One member of the PSRC reported:

“There appears to be a keen sense of inspectors being under the microscope and somewhat

reluctant to refer passengers to secondary searches, and supervisors are fearful of approving searches beyond secondary. The feeling of being second-guessed and overreaction following the current situation is high."

The recent statistics belie that conclusion. There were fewer personal searches between June 1998 and July 1999---795 air passengers, down from 3,416 in the previous fiscal year.¹⁶

The fact is that Customs conducted 47 percent fewer personal searches on arriving passengers, but the search efficiency improved by 65 percent. In FY 1998 the efficiency was 3.5 percent, and in FY 1999 the efficiency was 5.8 percent.¹⁷

PSRC Recommendation 10: The U.S. Customs Service needs to put into place a formal and regular monitoring and evaluation process to determine the extent to which the new guidance is accepted and implemented by Customs officers.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC and advise that the monitoring process allows for input from non-Customs and non-federal persons.

Category 2 also focuses on the manner in which the U.S. Customs Service handles abuses in passenger processing procedures by officers when enforcing the law to protect the national interest, balanced against the need to protect individuals' privacy rights.

PSRC Finding 11: Violations in the Present Passenger Processing Procedures

Violations have occurred in the present passenger processing procedures. The U.S. Customs Service's own adverse action/disciplinary reporting system indicates that there have been abuses. However, the abuses/violations do not appear to be widespread. Some people expressed concerns that accusations of abuses and violations of procedures were not properly refuted.

PSRC Recommendation 11: The public affairs/communications arm of the U.S. Customs Service needs to plan a strategy and process for the future that refutes unfair accusations about abuses and violations of the Service's procedures without violating the rights of the employees and working with the leadership of the U.S. Customs Service. The communications should spell out the functions of the

¹⁶ These statistics are from the U.S. Customs Service's Office of Field Operations.

¹⁷ These statistics are from the U.S. Customs Service's Office of Field Operations.

Service and honestly address the abuses that do exist. The U.S. Customs Service needs to ensure that abuses and violations by officers are reported to the public, and also that sanctions are imposed in a proper and transparent manner.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC and have no additional recommendations.

PSRC Finding 12: Discipline

The issue of discipline of Customs employees who are found to have acted counter to the laws and guidelines was also a subject of this review.

A most instructive document in this regard was a February 10, 1999, memorandum to all Customs employees from Commissioner Kelly. He sent the message that (1) the Service must take misconduct seriously; (2) supervisors and employees alike must be subject to the same rules and the same processes; and (3) everyone must be treated fairly and consistently. The Commissioner noted misconduct and resultant discipline for fewer than 3 percent of the workforce in three years (1996 to 1998). The questions remain, however, whether the reporting system noted all misconduct and whether supervisors and managers are taking misconduct as seriously as the Commissioner is.

Below are some basic information and statistics on the actions taken by the Service.

For the first two quarters of fiscal year 1999, 70 adverse and disciplinary actions were effected. There were 54 suspensions for a variety of reasons, including disruptive and unprofessional conduct and failure to follow proper search procedures.

On May 3, 1999, the Discipline Review Board¹⁸ was established. By the end of June, the Discipline Review Board had reviewed 58 cases for the May/June period, of which 30 percent warranted adverse action proposals.

The U.S. Customs Service had in its new 1999 Table of Offenses and Penalties the following that related to the personal search process:

- "Failure to observe established policies or procedures in the apprehension or detention of suspects or violators" (14-day suspension to removal for second/subsequent offenses).

¹⁸The Discipline Review Board is a cadre of 50 trained Customs managers who serve on panels of three. One panel convenes approximately every two weeks.

- "Use of discourteous, unprofessional, derogatory, or otherwise inappropriate language, gestures, or conduct toward members of the public" (5-day suspension to removal for second/subsequent offenses).
- "Use of critical, demeaning, or degrading remarks, comments, observations, statements, or actions which have the purpose or effect of discriminating because of race, color, age, sexual orientation, religion, sex, national origin, or disability" (3-day suspension to removal for second/subsequent offenses).
- "Intentional or reckless disregard of the rules governing arrests, searches, seizures" (30-day suspension to removal for first offense).
- "Criminal, infamous, or notoriously disgraceful conduct, or other conduct prejudicial to the government" (could lead to removal on first offense).
- "The Table of Penalties is a guide, and there may be certain incidents of misconduct that are so serious as to warrant removal on the first offense, despite the published range of penalties. While consistency is clearly the goal, each case is different, and the due process afforded each employee can affect the final outcome in significant ways."

PSRC Recommendation 12: The Commissioner should direct the senior management throughout the organization to ensure that the new discipline strategy and the new personal search policies are a reality. It should be clear to one reviewing discipline reports that supervisors and managers are taking seriously the importance of disciplining those who violate the personal search procedures. This means that there should be an annual report to the Commissioner on the relationship of citizen complaints, supervisors' reports of violations of the policies, and procedures and disciplinary actions.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC and have no additional recommendations.

CATEGORY 3

Category three issues consider the effectiveness of the new approaches to personal searches as well as additional initiatives that could be considered by the U.S. Customs Service.

Among the specific topics that the PSRC covered are the new approval processes, training initiatives, passengers' information, passengers' complaints, and data collection and analysis.

This section also considers additional initiatives, procedures, and recommendations for the future.

Among the future initiatives under review are technological solutions, lessons from other law enforcement agencies, further review of the extent and composition of training, improved identification of inspectors, and potential contributions to effective personal search procedures by the airlines, the media, and airport authorities.

New Processes and Procedures

In September 1999, the U.S. Customs Service completed the basic provisions of a revised Personal Search Handbook. The revised handbook reflects significant changes in the personal search policies and procedures that were the basis of the March 1997 handbook.

PSRC Finding 13: The Revised Personal Search Handbook

The table below relates the changes made in the new Personal Search Handbook to the recommendations in the PSRC's report.

Changes in Personal Search Procedures	Relevant to PSRC's Report Recommendations
A Customs supervisor must approve all pat down personal searches.	Recommendations: 2, 14
A supervisor must fill out a check sheet for all negative personal searches.	Recommendations: 2, 14
A port director must approve all searches that require moving a person to a medical facility for a medical examination. In the event of a prolonged detention (eight hours or longer), where probable cause has not been developed,	Recommendations: 2, 3, 13

the port director must reapprove further detention.	
Customs officers can consult with Customs counsel at any time. Such consultation is mandatory for all medical examinations.	Recommendations: 3, 5, 14
When taking a person to a medical facility for a medical examination, Customs officers are required to explain the process and timelines, without jeopardizing law enforcement issues.	Recommendations: 5, 14
When Customs detains a person for eight hours and probable cause for arrest has not been developed, Customs will notify the U.S. Attorney to secure authorization from a federal magistrate for further detention.	Recommendations: 3
Any person delayed for two hours for a personal search will be given the opportunity to have a Customs officer notify someone of the delay.	Recommendations: 3, 5, 13

PSRC Recommendation 13: The U.S. Customs Service should take steps to ensure that the revised Personal Search Handbook is in the hands of all supervisors, Passenger Service Representatives, and personnel involved in personal search activities, and that it is the basis of the training activities. Commissioner Kelly should charge his staff to review the recommendations in the PSRC's report to determine which recommendations have not been covered by the new policies and procedures and provide a strategy for adopting the recommendations or providing a strong basis for declining to adopt them.

It might be useful for Customs to develop or pull together a "Customs Support Group" or "Friends of Customs" that meet periodically to see how things are going. Members of the group might include representatives from the airlines, Customs officials, private citizens/eminent persons, PSRC members, and others.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC. The PSRC's suggestion to have a peer group is very important in that it is proactive and would provide Customs with an opportunity to establish lines of communication with select individuals, organizations, and businesses.

It is therefore recommended that Customs not only form a national peer group, but that each port identify stakeholders within their respective locales and form such groups. The group should determine how often to meet, but should also recognize that they are to be available on a need be basis (to be determined either by Customs or the members of the group).

Individuals from human relations and civil rights organizations should also be considered to be a part of these groups. Their organizations could then be called upon to assist Customs if their constituent groups have concerns, or if Customs finds that constituents of these organizations are disproportionately being stopped or tracked as having a large number of positive searches.

PSRC Finding 14: The Revised Approval Process

Although new approval steps designed to ensure greater accountability are in place throughout the organization, it is still important that the inspectors and supervisors be trained in addressing passenger concerns.

Effective May 20, 1999, the Field Operations Personal Search Policy was amended to require that all personal searches that include removing a person to a medical facility for a body cavity or X-ray search or detention for a monitored bowel movement require the approval of the Port Director. The Port Director is to review the articulable factors and must consult with the Associate Chief Counsel. The approval or disapproval is to be recorded in the appropriate Treasury Enforcement Communications System.

This change in procedure appears to be responsive to the need to ensure accountability for decisions to intrude on the privacy of individuals. Furthermore, the necessity to justify one's position requires thought.

Effective May 27, 1999, the personal search policy was amended to provide that all pat down personal searches require prior approval of a supervisor unless there is a concern that a weapon may be involved.

PSRC Recommendation 14: The U.S. Customs Service should take steps to ensure that the revised policy is implemented in the field. This means that in addition to the regular monitoring by the supervisors, senior management should establish an annual evaluation to cover, among other issues, the extent to which the approval process change is being implemented.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC and have no additional recommendations.

PSRC Finding 15: Training

Training programs are not new to the U.S. Customs Service, but it is not clear that diversity/sensitivity training has been a high priority in the past. Recently, the Service has instituted new training packages that cover such topics as cultural interaction and interpersonal communications. Furthermore, the training will now cover the new policies. Most of the training in this area is in-house. The jury is still out on the effectiveness of the new training. It is instructive to note that some of the personnel interviewed by the PSRC said some of the training was too elementary, too "touchy feely," and/or not sufficient. Others interviewed by the PSRC were pleased with the concentration on training and believed that it would make a difference.

PSRC Recommendation 15: The U.S. Customs Service should seek to bring in outside diversity experts to do the training, to ensure that the training represents the "best practices" in diversity training, and to ensure that it is totally independent of the past practices and culture of the Service. Also, there should be two types of evaluation of the effectiveness of the training ---internal and external. The evaluations should determine the effectiveness of the training from the point of view of those trained as well as from the point of view of the supervisors and managers. The evaluations of supervisors/managers should determine the extent to which the training led to change in behavior that reflects the changes in personal search policy. From time to time, the U.S. Customs Service should have an outside evaluation of its overall training plan and strategy.

Independent Advisor's Recommendations and Response: The idea of bringing in "outside diversity consultants" as instructors for the diversity training sessions is noteworthy. However, there is merit to having a FLETC or Customs instructor as well because of their law enforcement experience and knowledge of the environment that the participants will face once assigned to the field. Therefore, it is recommended that all diversity courses held at FLETC be team taught by one FLETC trainer and one diversity expert who is not affiliated with a government agency. The team should be diverse in terms of race and gender.

PSRC Finding 16: Informing Passengers of the Personal Search Process and of Their Rights

As stated earlier, some of the problems the U.S. Customs Service has with the public's perception of the Service are related to the limited amount of information provided to passengers about the personal search process and passenger rights during Customs searches.

The U.S. Customs Service has taken the initiative in implementing a variety of changes in how it provides information to the public.¹⁹

¹⁹ Information is now provided to the public through the following means:

PSRC Recommendation 16: The U.S. Customs Service should gather data, using the most effective approaches and considering focus groups and surveys, to determine the effectiveness of the new information strategies. Also, before it invests large amounts of money in a computerized digital informational broadcast system at all airports, the Service should test the prototype to determine if they actually result in a better understanding by passengers of the process and of passenger rights.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC and recommend that after an analysis of the effectiveness of the new information strategies is determined that necessary changes be made.

PSRC Finding 17: Collecting, Analyzing, and Responding to Passenger Complaints

The PSRC was surprised to find little or no central tracking of citizen complaints until March 15, 1999. Had there been a central data center on passenger complaints about the search process, the Service would have had early warning of dissatisfaction with the personal search processing at one or more of the airports.

In March 1999, the Customer Satisfaction Unit was established within the Office of Field Operations to centralize the processing of complaints and compliments from the general public, travelers, industry, other government agencies, and Congress. Each port, as well as headquarters, will establish a committee to perform quarterly reviews of all complaints/compliments received within the port to determine whether further action is necessary. This seemed to be a necessary step to understanding passenger complaints and being prepared to address them through individual actions and, where necessary, policy changes.

PSRC Recommendation 17: Because the collection and analysis of customer complaints are important to monitoring the viability of the personal search policies and the implementation of those policies, the management of the U.S. Customs Service, including headquarters management, should review the data monthly, and summary analyses should be made available to the field at least on a

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- A. Three revised information brochures
 - B. A comment card has been instituted at all commercial international airports
 - C. New airport informational signs have been delivered to the busiest 40 international airports

quarterly basis.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC and recommend that compliments received should be summarized and made available to the field on a quarterly basis as well.

INITIATIVES THAT THE PSRC RECOMMENDED FOR CONSIDERATION

PSRC Finding 18: The Potential Role of Airport Authorities and Airline Companies

The airlines could help the U.S. Customs Service if they used their magazines and their video information systems to give more details to passengers about the role and responsibilities of the U.S. Customs Service and the personal search processing.

PSRC Recommendation 18: The airlines need to understand the importance of assisting the U.S. Customs Service in carrying out its responsibilities. This means the airlines, possibly working with the Federal Aviation Administration, could be encouraged to show a video covering Customs policies and procedures. The video would be shown before planes land to educate passengers about the responsibilities of the U.S. Customs Service and what to expect as a passenger entering the United States. The airlines could also be asked to provide more interesting and engaging information about the role of the U.S. Customs Service in their magazines.

Independent Advisor's Recommendations and Response: Support the recommendations of the PSRC and recommend that such a video distinguish the different arrival processing duties of the U.S. Immigration and Naturalization Service, U.S. Customs Service, and the U.S. Department of Agriculture. It should also be made available in different languages.

Finding 19: The Identification by Passengers of Customs Officers at the Ports of Entry

Whether Customs inspectors should use name badges when on duty has been a long-standing subject of debate. The supervisors already wear name badges. Proponents of name badges on inspectors argue that they will discourage improper behavior on the part of the inspectors. Opponents argue that the safety and security of the inspectors is in jeopardy because name badges will make officers easily identified after hours, and hence subject them and their families to attacks by drug dealers or others that they have arrested for seizures. It is worth noting that officers of other agencies on the line/at the border wear name tags, and those other agencies have not found a need to reverse that policy for safety reasons. Neither side of the argument has been proven.

PSRC Recommendation 19: We recommend further analysis of the "name badge" issue to determine to what extent the safety of the inspectors would be in jeopardy with name tags and to what extent the benefit of improving the behavior of inspectors outweighs the risks. At the very least, the U.S. Customs Service should make more visible the numbers of the badge holders. This could mean larger and darker badge numbers that are easily readable.

Independent Advisor's Recommendations and Response: Since the completion of the PSRC's report, the issue regarding nametags has been resolved by the U.S. Federal Service Impasses Panel and therefore requires no further action (see Appendix H). All of Customs uniformed staff will be required to wear name plates displaying their legal last names beginning on March 21, 2001. Under federal labor law, this decision is final and cannot be appealed.

PSRC Finding 20: The Future of Technological Solutions

The U.S. Customs Service has introduced new technological solutions to provide effective service to the public in the least intrusive manner. It is difficult to determine whether these are going to make a difference. Body scanning equipment is one example. Body Scan Imaging Technology has been used at JFK (AS&E BodySearch) and Miami (RAPISCAN Secure 1000) since April 1999. These units will verify whether a passenger is carrying contraband or merchandise under the clothing. Units also have been placed in Atlanta, Chicago, Houston, and Los Angeles.

It is important to note that only 13 percent of the passengers given the option of the body scan imaging technology have chosen it over the body search. Many passengers have observed that it takes more time, in part because of the time it takes to fill out the forms before the scanning, and that the delay can hinder passengers in making connecting flights or meeting their waiting parties.

Another technological innovation is the digital mobile X-ray, which would eliminate the need to transport passengers to distant medical facilities because the images would be digitized and transmitted to the local hospital for a reading by a medical doctor. The present plan is to have the digital mobile X-ray at major airports in FY 2000.

PSRC Recommendation 20: The Service should work with the manufacturers of the body scan to make the equipment more passenger-friendly. Also, the Service should work to simplify its paperwork associated with the scanning process or use technology to assist in this process (the form could be put on a computer with the required questions). Further, the Service should determine whether the experience to date argues for continuing to place the equipment in other airports.

Independent Advisor's Recommendations and Response: Support the recommendation of the PSRC and have no additional recommendations.

IV. INDEPENDENT ADVISOR'S ADDITIONAL RECOMMENDATIONS

In order to have the necessary background information to review the findings of the PSRC, an independent assessment of Customs policies and procedures regarding personal searches in international airports was conducted. Throughout this process, key learnings were realized which call for additional recommendations to those made by the PSRC. This information has been categorized by issue: employee morale, training, air passenger traffic patterns, personal searches, collecting and tracking data, and a monitoring system.

EMPLOYEE MORALE

It is evident from the allegations about Customs profiling and the subsequent press attention that some Customs officers feel discouraged, disempowered and have experienced a drop in self-esteem concerning their work. In addition, the amount of changes that have occurred in response to these accusations is significant and to some overwhelming.

It is therefore recommended that Commissioner Kelly communicate with Customs officers that while this has been a difficult period, their service continues to be of great value and that he understands the impact of all of the changes. It is further recommended that Commissioner Kelly state that he is available to receive input from officers in the field, and that their comments will receive a response. This communication should summarize the *vision* of all of the changes to date (not a detailed summary) as well as articulate the strategic plan, ultimate goals, and objectives of all of the policy changes.

TRAINING

Any professional development training must be clearly related to the role and function of the employee or supervisor. Diversity education and awareness training must be a component of such education processes and linked to improving internal staff relations and customer service. The rationale for such trainings is that in a diverse society one must possess a skill set of multi-cultural understandings and cross-culture competencies in order to be effective in the workplace.

Diversity education and awareness training teach people how to be more aware of their thought processes and present perceptions. These patterns continue to operate and perpetuate bias and prejudice unless they are looked at systematically and consciously with the intent to understand and modify them.

The following changes and additions have therefore been outlined for the FLETC training programs for Customs officers. They are categorized by issue: FLETC Instructors; training curricula; training evaluations; and field issues.

FLETC Instructors:

1. The criteria to qualify as a diversity trainer for Customs is vague as there are no specific educational or instructional experience requirements. Therefore, specific skill sets need to be determined by Customs Assistant Commissioner of the Office of Training and Development, a FLETC trainer, and a diversity expert who is not affiliated with a government agency for future hiring practices. Current instructors should receive training on the identified skill sets to increase their knowledge base as well.

2. The instructors' development course required for all of FLETC's Customs trainers needs to include training on diversity and multiculturalism. This should be created and team taught by a FLETC trainer and a diversity expert who is not affiliated with a government agency. The team should be diverse in terms of race and gender.

Training Curriculum:

1. An outside diversity expert should attend all future FLETC Curriculum Conferences to assist in reviewing and modifying Customs diversity courses.

2. The curriculum and length of the following courses taught by FLETC and Customs should be reviewed and modified as needed with consideration of the articulated recommendations. This should be conducted by Customs Assistant Commissioner of the Office of Training and Development, a FLETC trainer, and a diversity expert who is not affiliated with a government agency.

A. "Cross-Cultural Communication"

B. "Image, Attitude, and Appearance Training"- expand current course to emphasize how to treat passengers in a courteous, professional, and dignified manner.

C. "Interviewing Practical Exercise" - expand current course to include an opportunity for participants to role-play passengers in order for them to experience what it is like to have their belongings and their person examined (similar to role-reversals during the "Duty Collection Practical Exercise Training").

D. "Responsible Monitoring Training" - role-playing for employees to understand the importance of monitoring each other's conduct should be included in Customs Internal Affairs workshop on ethics.

E. Senior Inspector courses - determine select courses from Basic Training that should be repeated for Senior Inspectors in order to develop their skills regarding diversity issues. In addition, create a course on how to manage a diverse team.

Training Evaluations

The effectiveness of FLETC's diversity training courses should be continuously evaluated. The evaluation process and materials should be reviewed by Customs Assistant Commissioner of the Office of Training and Development, a FLETC trainer, and a diversity expert who is not affiliated with a government agency. Their goal should be to determine if the evaluation materials provide an opportunity for FLETC participants to assess their trainers' credibility, curriculum, and to respond to if the courses' goals and learning objectives were met. Necessary changes should then be made to the evaluation forms.

Field Issues

A. On-the-Job Training - A uniform process needs to be established at all international airports for on-the-job training for Customs' new hires. It is evident that "shadowing" of senior inspectors does occur, however, this system needs to be institutionalized. The plan should address how "shadowing" should be conducted as well as for what length of time.

B. Customs Training Officers - In recognition that some international airports have limited staff, those who can manage to have an official attend a FLETC training on occasion need to do so (many have to date). Those selected as their port's training officers need to participate in FLETC's advanced training courses and then conduct trainings at their respective ports to share key learnings with other officers.

C. FLETC and Customs trainers need to occasionally perform field visits (some have to date). They need to meet with officers in order to assess current trends impacting performance levels. In turn, the trainers will be able to modify their programs and/or develop new exercises to expand the knowledge base and skill set of each new inspector and those undergoing senior inspector training.

INCREASE IN AIR PASSENGER TRAFFIC

The surge in the number of travelers arriving and departing from U.S. cities is expected to continue. According to Customs, the U.S. can expect to accommodate a continuous 5% annual increase in air passenger traffic. In response to this trend, it is recommended that Customs execute the following:

A. Aggressively seek funding - it is critical that Customs receive adequate funding to meet their increasing responsibilities. Funding needs to be provided to supplement their inspectional workforce as well as necessary resources. Customs has been and is expected to process more air passengers and cargo with a minimal increase in staff. This task is very difficult without appropriate staffing levels that are more commensurate with the number of international travelers.

B. Maintain a diverse staff at each port - it is essential that Customs continuously monitor their hiring and separation rates to ensure that their workforce represents that of the traveling public. It should be diverse in terms of race, ethnicity, gender, religion, and culture. Staff exit interviews

need to be examined aggregately and monitored to determine if there are patterns as to why people are separating from the agency.

C. Staff allocation - the way in which future staff is allocated to different ports is being created (i.e., the Resource Allocation Model). This tool seems to be promising. Finishing the model and considering how to utilize it should be made a priority within the agency.

D. Expanding APIS - new and bold means should be taken to get cooperation from all airlines to provide their reservation information in order for Customs to complete background checks before arrivals.

PERSONAL SEARCHES

1. All international airports need a uniform process on how to handle passengers that have been determined negative cases after being detained at a hospital. This assistance should include helping passengers with transportation to their intended destination as well as booking hotel rooms and changing tickets.

2. The CMC Directors of Field Operations should be required to share weekly personal search results from the Passenger Programs Division at headquarters with Port Directors within their geographic area.

COLLECTING AND TRACKING DATA

Customs should continue exploring systems to track race and gender statistics for secondary searches. Once a system is implemented, the data should be reviewed monthly by each port, and a summary analysis should be provided to headquarters for review on a quarterly basis. This information should be monitored.

MONITORING SYSTEM

Throughout the PSRC report and this report there is mention of monitoring the new policies and procedures to date as well as those that will be implemented in the future. This is essential. Therefore, Commissioner Kelly and his staff need to develop several options for an effective monitoring system that includes participation of federal and non-federal persons to review the progress of the personal search process. These options should then be reviewed by the PSRC for input on which would provide the most serious and thoughtful evaluations of the effectiveness of the revised personal search procedures and policies.

In addition, as stated in the PSRC report, Commissioner Kelly and his staff should review all of the PSRC and Independent Advisor's recommendations to determine which have not been covered by new

or upcoming changes in Customs personal search policies and procedures. A strategy for implementing the recommendations should be created as well as a summary of recommendations that will not be adopted including the logic for declining to adopt them. These two items should then be shared with the members of the monitoring team with the allowance of changes based on their feedback.

APPENDIX A

The following information is from the U.S. Customs Service's Office of Chief Counsel:

Personal searches are used by U.S. Customs officers to determine if a person is carrying weapons, merchandise, or contraband on or within his/her body. Customs officers use training, experience, subject matter expertise, information and intelligence related to smuggling trends, and analysis of recent seizures to determine who should undergo a personal search. Alerts by canines and advance targeting information are also considered in the decision making process.

Elements of a lawful search include those that are performed by a Customs officer searching for merchandise at a land border, seaport, airport, or extended border (i.e., hot pursuit from a border to an area beyond a border).

Personal searches include:

1. **Frisks:** Patting of outer clothing of a person to locate a weapon. This is limited to circumstances where a Customs officer believes a person is involved in criminal activity and may be armed.
2. **Patdown:** A more thorough patting of the outer clothing of a person to locate merchandise. Although the Supreme Court has ruled that this is part of a routine examination and no suspicion is required, Customs requires *some* or *mere* suspicion.
3. **Body:** Removal of some or all clothing to locate merchandise concealed under the clothing. This requires *reasonable* suspicion (objective, articulable facts) and is limited to removal of clothing only in the area of suspicion.
4. **X-Ray:** Medical X-ray of part of the body to locate contraband concealed within the body. It requires *reasonable* suspicion (objective, articulable facts) and is performed in a medical facility by medical personnel.
5. **Body Cavity:** Intrusion into the body (vaginal or anal area) to locate merchandise. Requires *clear indication* or *plain suggestion* of internal concealment --- specific information that merchandise is concealed within the body, a foreign object protruding, or totality of circumstances. This method is only performed by a medical doctor in a medical facility.
6. **Monitored Bowel Movement:** Detention and monitoring of a person for a period of time until one or more bowel movements occur. Used in order to determine if contraband is concealed within the alimentary canal. Only performed in medical facilities under the direction of a medical doctor.

APPENDIX B

MS. CONSTANCE BERRY NEWMAN

Constance Berry Newman became Under Secretary of the Smithsonian Institution in 1992. She was Director of the Office of Personnel Management from 1989 to 1992. For more than 20 years she managed public and private organizations. Among her major management positions were: Assistant Secretary of the United States Department of Housing and Urban Development; Director of VISTA; and President of the Newman & Hermanson Company. She was also Commissioner and Vice-Chairman of the Consumer Product Safety Commission.

From 1987 to 1988, Ms. Newman worked for the Government of Lesotho as a Cooperative Housing Foundation consultant to advise the Ministry of Interior regarding the establishment of a housing corporation to receive World Bank funding.

During her public career, which began in 1961, Ms. Newman worked both as a career public servant and a political appointee with four Presidential appointments, three of which were confirmed by the Senate.

Ms. Newman was a Woodrow Wilson Visiting Fellow from 1977 to 1985 and a member of the Adjunct Faculty at the Kennedy School, Harvard University from 1979 to 1982. She has received an Honorary Doctor of Law from her Alma Mater, Bates College, Amherst College and Central State University. In addition to receiving a B.A. from Bates College, she received a Bachelor of Science in Law degree from the University of Minnesota Law School. In 1985, she received the Secretary of Defense Medal for Outstanding Public Service. At present she serves on the Board of Trustees of The Brookings Institution and Bates College and is Vice Chairman of the District of Columbia Financial Responsibility and Management Assistance Authority.

MS. ROBIN RENEE SANDERS

Robin Renee Sanders is currently serving as a State Department official. She previously was the Director for Africa at the National Security Council. Prior to this appointment, Ms. Sanders served as the Special Assistant for Latin America, Africa, and International Crime for the Undersecretary for Political Affairs at the Department of State in Washington, D.C. From 1994 to 1996, Ms. Sanders was the Chief of Staff for Congresswoman Cynthia McKinney of Georgia. She holds a Masters of Arts degree in International Relations and Africa Studies; a Masters of Science degree in Communications and Journalism from Ohio University; and a Bachelor of Arts in Communications from Hampton University. She has received extensive professional training from the State Department's School of Advanced Studies in political analysis, and African and Latin American studies.

Ms. Sanders has worked as a political affairs officer abroad for the State Department for 13 years,

most notably serving in Senegal, Namibia, Sudan, Portugal and the Dominican Republic. She was a part of special missions to Angola and the Democratic Republic of the Congo, and was a key figure of the team that designed President Clinton's historic Africa trip and pro-active Africa policy. She speaks French, some Portuguese, and Spanish.

While abroad, Ms. Sanders worked extensively on issues such as democratization and good governance to election assistance and peacekeeping. She was an election observer in Senegal, Portugal, Dominican Republic and Namibia's first-ever, post-apartheid election. While in Sudan, Ms. Sanders served as the point person for analyzing Sudan's civil war as well as the rise of Sudan's Islamic fundamentalist regime. Additionally, she has managed human rights, democracy and food emergency programs.

As Congresswoman McKinney's Senior Policy Advisor covering Africa, Latin America, and Bosnia, Ms. Sanders' also worked on key domestic issues like crime, health care, and arms control.

She is the recipient of three State Department Superior Honor Awards; three State Department Meritorious Honor Awards; and is cited in Who's Who of American Women. She is a member of the Council on Foreign Relations; the District of Columbia Chamber of Commerce; Alpha Kappa Alpha Sorority; and is a Board member of Women in International Security, and the Una Cox Foundation.

MS. ANA MARIA SALAZAR

Ms. Ana Maria Salazar was appointed the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support on July 23, 1998. In this capacity, she is the managing executive for all matters relating to the Department of Defense's support to the President's National Drug Control Strategy. This includes the preparation of the Department of Defense counterdrug program and budget formulation and implementation of counterdrug policies, requirements, priorities, resources, and programs.

Ms. Salazar most recently served as Policy Advisor for the President's Special Envoy for the Americas at the White House. She formulated and coordinated policies designed to advance the President's agenda for Latin America and the Caribbean, including issues related to justice and security, law enforcement, education, human rights, democracy and trade.

Prior to the White House, Ms. Salazar was at the State Department's Bureau of International Narcotics and Law Enforcement Affairs from 1995 to 1997. There she advised the Assistant Secretary in formulating the Administration's policies on dismantling international criminal organizations, counternarcotics and anti-money laundering issues.

Ms. Salazar lived in Colombia from 1990 to 1995. There she served as the Judicial Attache at the

United States Embassy in Bogota, coordinating evidence and information requests between the United States and the relevant Colombian agencies for prosecution of drug trafficking kingpins. Also in Colombia, she acted as the Project Coordinator for a \$36 million dollar effort designed to improve the administration of justice in that country. Other international experience includes her work in Guatemala as the Director for a judicial training program sponsored by Harvard Law School's Center for Criminal Justice.

Ms. Salazar has lectured and published in both English and Spanish on the topics of criminal justice reforms, alternate dispute resolution programs, and training programs for investigators, prosecutors and judges. She is a recognized international law expert in the fields of law enforcement, counternarcotics, judicial reform and mediation. She received her J.D. from Harvard Law School in 1989 and a B.A. from the University of California at Berkeley in 1986. She is admitted to practice law in Massachusetts and in the District of Columbia.

MR. HUBERT T. BELL

On July 8, 1996, Mr. Hubert T. Bell took the oath of office and began his duties as the Inspector General of the Nuclear Regulatory Commission (NRC). Mr. Bell was nominated to fill this position by President Clinton in April and was confirmed by the Senate in June.

Mr. Bell is a graduate of Alabama State University and a 29-year veteran of the U.S. Secret Service. At the time of his nomination for the NRC post, Mr. Bell was Executive Director of Work Force Planning and Diversity Management for the Secret Service, and earlier had been Assistant Director for the agency's Office of Inspection.

Other Secret Service assignments included those of Assistant Director of the Office of Protective Operations; Deputy Assistant Director of the Office of Investigations; Agent-in-Charge of the Vice Presidential Protective Division; and Agent-in-Charge of the Honolulu, Hawaii field office.

APPENDIX C

MR. SANFORD CLOUD, JR.

Mr. Sanford Cloud, Jr. became the eighth President of The National Conference for Community and Justice (NCCJ) in 1994. Mr. Cloud, a lawyer, is the first African American to lead NCCJ since its founding in 1927 as The National Conference of Christians and Jews.

As President, Mr. Cloud has convened leading thinkers with strongly opposing perspectives to participate in five nationally telecast discussions: The National Conversation on Race, Ethnicity, and Culture; helped to create a collaboration of national organizations to combat prejudice and build healthy intergroup relations; served as a member of President Carter's delegation to oversee the first Palestinian elections in Jerusalem; and at the request of the White House, convened faith leaders who are now committed to enhancing their work to combat racism in America during the next decade. He is an internationally recognized speaker and has addressed the City Club of Cleveland, Cleveland, Ohio; Jonathan Breakfast Club, Los Angeles, California; and the NCVO Annual Conference in London, England.

Mr. Cloud currently serves on the Board of Directors of Advest Group, Inc., Tenet Healthcare Corp., Northeastern Utilities System. He also serves as Chairman of the Board of The Children's Fund of Connecticut.

Before coming to NCCJ, Mr. Cloud held a broad range of professional and philanthropic positions. He was a partner in the law firm of Robinson & Cole in Hartford, CT; Vice President, Corporate Public Involvement and Executive Director of the Aetna Foundation; a two-term Connecticut State Senator; a Lecturer of Law at the University of Connecticut Law School; a former member of the Board of Directors of the Independent Sector, the Council on Foundations and the Juvenile Diabetes Foundation International. He has served as Chairman of the Board of Trustees of Hartford Seminary and as an advisor to the Kellogg Foundation National Fellowship Program.

Born and raised in Hartford, Connecticut, Sanford Cloud, Jr. is a 1966 graduate of Howard University's College of Liberal Arts and a 1969 graduate of the Howard University Law School. In 1992, he received an M.A. in Religious Studies from the Hartford Seminary. Mr. Cloud has also been awarded an Honorary Doctorate of Humane Letters from The University of Connecticut for his lifetime of achievement for the betterment of humankind and an Honorary Doctor of Social Science from Providence College for promoting the course of justice and a just society throughout his career. In 1998, Mr. Cloud received The Spirit of Anne Frank, Outstanding Citizen Award from the Anne Frank Center USA, as one who has stepped forward and actively confronted anti-Semitism, racism, prejudice and bias-related violence.

APPENDIX D

The following changes have been implemented by Commissioner Kelly regarding Customs personal search policies and procedures since the commencement of his term in August 1998:

A. Changes to Employee Processes

1. Disciplinary procedures were revised.
2. Internal hotline established to report alleged employee misconduct.

B. Personal Search Process Changes

1. Passenger Processing Targeting Committee created to redefine the personal search indicators and revise the personal search handbook which has been distributed to all Customs officers across the nation.
2. Require approval from a supervisor before conducting a patdown search (except immediate patdowns for weapons).
3. A check sheet must be completed by a supervisor for each search performed.
4. If a personal search of a passenger extends for two hours, Customs supervisors must notify a person of the passenger's choice about the delay.
5. Customs officers must notify a federal magistrate in cases where they want to hold an individual for more than eight hours (when probable cause for arrest has not been developed).
6. Customs attorneys are available 24 hours a day to consult with Customs officers before intensive searches are conducted. This is mandatory for medical examinations.
7. Port director must approve moving a person to a medical facility for a body cavity examination, x-ray and/or detention for monitored bowel movements. In the event of prolonged detention (eight hours), where probable cause has not been determined, the port director must reapprove further detention.
8. Required to explain personal search process to the passenger as it becomes more intrusive.

C. Public outreach

1. Created a Customs Satisfaction Unit at headquarters to centralize telephone, verbal, and written complaints/compliments to record comments from the public, travelers, industry representatives, other government agencies, and Congress to track passengers' issues. Call complainant within 24 hours after the receipt of communication.
2. A toll-free number is available for the public to register complaints/compliments, or request information.
3. Installed new signs at major airports and printed brochures that better inform travelers about Customs purposes and passengers' rights.
4. Assigned Passenger Service Representatives to processing areas at the nation's busiest international airports in order to provide on-the-spot assistance to international travelers.
5. Thirty-five multilingual information kiosks have been placed in the departure lounges at 15 major U.S. airports.
6. Created new comment cards in order for passengers to better inform Customs about their complaints/compliments.
7. Currently revising the Customs declaration form.

D. Training

1. Created an Office of Training and Development to coordinate Customs training activities.
2. Implemented new trainings on cultural interaction, verbal confrontation, passenger enforcement selectivity, personal search policies, and interpersonal communication.

E. Technology

1. Installed eight body scan machines to make the search process less intrusive and offer passengers an alternative to the patdown search method.
2. \$9 million dollars was appropriated to Customs in the FY 2000 budget to install on-site X-ray systems in nine airports.

F. Data

1. A working group was formed to improve passenger data collection. One result of their efforts is that it is now mandatory to track demographic information (i.e., race, gender, age, citizenship, etc.) for those detained for personal searches.

2. Created a Passenger Data Analysis unit at headquarters to review all personal search data.